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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130805680-4915-02]

RIN 0648-BD58

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Coastal Migratory Pelagic Resources in the Gulf of Mexico and
Atlantic Region; Framework Action

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures described in a framework action to the Fishery Management Plan for the Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (FMP) (Framework Action), as prepared by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils). This final rule allows transfer of Atlantic migratory group Spanish mackerel caught in excess of the trip limit with gillnet gear from one vessel with a Federal Spanish mackerel commercial permit to another vessel with a Federal Spanish mackerel commercial permit that has not yet harvested the trip limit; allows the receiving vessel involved

in a Spanish mackerel transfer-at-sea to have three gillnets onboard instead of two; and modifies the commercial trip limits for king mackerel in the Florida east coast subzone. This rule also implements an administrative change to correct an inadvertent error in a prior rulemaking unrelated to this Framework Action. The purpose of this final rule is to modify the restrictions on transfer-at-sea and gillnet allowances for Atlantic migratory group Spanish mackerel to minimize dead discards of Spanish mackerel and modify the king mackerel trip limit in the Florida east coast subzone to optimize utilization of the resource.

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of the Framework Action, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727-824-5305, or e-mail: kate.michie@noaa.gov.

SUPPLEMENTARY INFORMATION: The coastal migratory pelagic (CMP) fishery of the South Atlantic and the Gulf of Mexico (Gulf), which includes Spanish mackerel, king mackerel, and cobia, is managed under the FMP. The FMP was prepared by the Councils and

implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On March 19, 2014, NMFS published a proposed rule for the Framework Action and requested public comment (79 FR 15293). The proposed rule and Framework Action outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

This final rule allows transfer-at-sea of Spanish mackerel in gillnets between vessels with Federal Spanish mackerel commercial permits that are using gillnet gear and allows vessels engaged in this transfer activity to have three gillnets onboard. The transfer-at-sea of harvested fish is only allowed if all the following conditions are met: (1) the owner or operator of both vessels involved in the transfer reports the transfer by telephone to the NOAA Office of Law Enforcement in Port Orange, Florida, prior to the transfer; (2) harvesting gear must be allowable gillnet gear, as specified in 50 CFR 622.377(b); (3) the transfer can only take place in Federal waters between two vessels with valid commercial permits for Spanish mackerel; (4) the receiving vessel must possess no more than three gillnets after the transfer is completed; (5) all Spanish mackerel exceeding the applicable daily vessel limit

shall remain in the gillnet until transferred; (6) the quantity of Spanish mackerel transferred to any single vessel shall not exceed the applicable daily trip limit; and (7) transfers of Spanish mackerel may only occur once per vessel per trip. This final rule also modifies the two gillnet possession restriction in order to account for the portion of a third net that is present onboard a vessel that receives Spanish mackerel transferred at sea. Only vessels engaged in this transfer activity will be allowed to have three gillnets onboard.

This final rule modifies the Atlantic king mackerel Florida east coast subzone trip limit so that during March 1 through March 31, if 70 percent or more of the quota has been harvested, the trip limit will remain at 50 fish per vessel per trip; however, if less than 70 percent of the quota has been harvested during that time, the trip limit will increase to 75 fish per vessel per trip until March 31. From April 1 through October 31, the Florida east coast subzone is not part of the Gulf migratory group king mackerel area; it is part of the Atlantic migratory group king mackerel area.

Additional Changes Contained in this Final Rule

Drift gillnets for all CMP species were prohibited in the South Atlantic exclusive economic zone (EEZ) through the final rule implementing Amendment 3 to the FMP (54 FR 29561, July 13,

1989) and through the final rule implementing the Resubmission of Disapproved Measures in Amendment 3 to the FMP (55 FR 14833, April 19, 1990). Run-around gillnets for king mackerel were prohibited in the South Atlantic EEZ through the final rule implementing Amendment 8 to the FMP (63 FR 10561, March 4, 1998). However, the regulations currently at 50 CFR 622.387, which address prevention of gear conflicts between hook-and-line and gillnet vessels in the South Atlantic EEZ, were inadvertently not removed at the time when the final rule for Amendment 8 was implemented. This rule corrects this mistake by removing the regulations at § 622.387. This revision is unrelated to the Framework Action.

Comments and Responses

NMFS received two comment submissions on the Framework Action and the proposed rule. One comment was from a government organization that stated it had no comment. One comment was from a commercial fishing organization that stated it was in support of the Framework Action and the proposed rule. NMFS received no other comments related to the Framework Action or the proposed rule. Therefore, no changes were made to the final rule in response to public comments.

Classification

The Regional Administrator, Southeast Region, NMFS, has

determined that this final rule is necessary for the conservation and management of CMP species and is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared for this action. An FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comment, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA uses updated information to produce more current estimates of numbers of small entities and impacts; however, its conclusions are consistent with the IRFA. The FRFA also includes an administrative action to remove regulatory text that was not included in the IRFA. The FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this final rule and the preamble to this final rule provides a statement of the need for and objectives of this rule.

No public comments specific to the IRFA were received and, therefore, no public comments are addressed in this FRFA.

Moreover, there were no comments pertaining to the economic impacts.

The final rule allows the transfer of Spanish mackerel by gillnet in the Atlantic EEZ, modifies existing trip limits for king mackerel in the Florida east coast subzone, and removes regulatory text concerning prevention of conflicts between hook-and-line and gillnet fishermen that is no longer necessary.

NMFS expects the final rule to directly affect commercial fishermen in the CMP fishery, and these fishermen represent businesses in the finfish harvesting industry. A business (including subsidiaries and affiliates) involved in finfish harvesting is classified as a small business if its total annual revenue is no greater than the Small Business Administration (SBA) size standard for that industry. SBA adjusted the size standard for finfish fishing (NAICS 114111) from \$19 million to \$20.5 million to account for inflation and the adjusted size standard went into effect on July 14, 2014.

Presently, there are 1,759 commercial fishing vessels with a valid commercial Spanish mackerel permit (as of April 21, 2014). It is unknown how many of those 1,759 vessels may volunteer to participate in a transfer by gillnet.

Consequently, all of the businesses that hold at least one of the 1,736 commercial vessel permits for Spanish mackerel (as of

November 5, 2013) are presumed to be small businesses. However, 22 vessels with a valid commercial Spanish mackerel gillnet permit have a valid or renewable king mackerel gillnet permit. Hence, it is estimated that at least 22 vessels that harvest Spanish mackerel will be directly affected by the rule. The above 22 gillnet fishing vessels are owned and/or operated by 18 businesses in the finfish fishing industry and each of these businesses is expected to be small.

In the proposed rule, NMFS estimated that there were 1,658 commercial fishing vessels with a valid or renewable permit for king mackerel, all of which were presumed to be small businesses. This number was updated on April 21, 2014, at which time we estimated that there were 1,483 commercial fishing vessels with a valid or renewable king mackerel permit. From this number, NMFS narrowed the number of impacted entities to those permit holders who reside in Florida in Miami/Dade County up through Volusia County, as these entities are the most likely to fish in the Florida east coast subzone. NMFS estimated that those residents totaled approximately 55 percent of all permit holders. Some number of additional entities living outside Miami/Dade County through Volusia County may also travel to and harvest from the Florida east coast subzone, but the inclusion of these entities in the analysis would not likely materially

affect the assessment of the expected economic effects. Based on the 55 percent calculated above, we estimate that 816 of the 1,483 vessels with a valid or renewable permit will be directly affected by the action to modify trip limits in the Florida east coast subzone. Although commercial vessels that land king mackerel harvest other species, it is presumed that all of the businesses that own and/or operate one or more of the above 816 vessels are small.

Since implementation of the gillnet prohibitions, the relevance of regulations at 50 CFR 622.387, which address prevention of gear conflicts between hook-and-line and gillnet vessels in the South Atlantic EEZ, has been zero. This is because the regulations implementing Amendment 3 and Amendment 8 to the FMP prohibited drift gillnets and run-around gillnets in the South Atlantic EEZ, respectively; however, the regulations implementing Amendment 8 inadvertently did not remove the provision at 50 CFR 622.387 at that time.

This final rule will end the prohibition on gillnet transfers of Atlantic migratory group Spanish mackerel in the EEZ, allow a vessel with a commercial Spanish mackerel permit to possess three gillnets in the Atlantic EEZ, and establish a new reporting requirement. The operator(s) of the two vessels engaged in a transfer will be required to report the transfer by

telephone to the NOAA Office of Law Enforcement in Port Orange, Florida, prior to the transfer. Because any transfer would be voluntary, any of the 18 or more small businesses that own and/or operate gillnet fishing vessels would likely participate in a transfer only if it has a net economic benefit.. Because transfers would allow at least 22 vessels to catch more than the trip limit if they transfer the amount of catch in excess of the trip limit to another permitted vessel, up to the trip limit, this action may increase the rate of landings. Vessels may engage in such transfers especially along Florida's east coast after the trip limit is reduced, as vessels that would not have previously reached the trip limit may now receive additional fish, up to the trip limit. NMFS considered one alternative, the no action alternative, to the proposed action of eliminating the prohibition on the transfer of Spanish mackerel by gillnet. The status quo alternative was rejected because it would not provide the potential economic benefit to small businesses as described above.

This final rule will change the commercial trip limit for king mackerel in the Florida east coast subzone without changing any current reporting or recordkeeping requirements. Under this final rule, any vessel that currently lands up to 50 fish per trip in February would experience no loss of landings or ex-

vessel (dockside) revenues. For trips that have historically harvested more than 50 fish per trip in February, this final rule is expected to reduce the king mackerel harvest by as much as 25 fish weighing 375 lb (170 kg) and with a dockside value of \$829 per trip per vessel in February of each year. Any vessel that currently lands up to 50 fish in March would experience no loss of landings and dockside revenues. Those that currently land more than 50 fish per trip in March are expected to reduce the king mackerel harvest by as much as 25 fish weighing 375 kg and with a dockside value of \$829 per trip per vessel in March. Consequently, vessels that have consistently landed less than 50 fish per trip in February and March would experience no adverse economic impact. Those vessels that have landed more than 50 fish per trip during those months would experience losses of dockside revenue up to \$829 per trip. If the rate of landings in the first 3 months of the 5-month season were such that the quota could be reached weeks before March 31, the lower trip limit in February could increase both the length of the open season and number of trips when ex-vessel price of king mackerel is typically at its highest in March. However, since the 2012-2013 season, there have been no early closures despite increases in the trip limit in February and March, and the final rule's

lower expected trip limits in February and March could result in lower annual landings.

This rule also modifies the commercial trip limit for king mackerel in the Florida east coast subzone. Among the actions in this rule, only this action is expected to potentially result in any adverse economic effect on any small entities. NMFS considered three alternatives, including the status quo alternative, to this action. The status quo commercial trip limit in the Florida east coast subzone is 50 fish from November 1 through January 31 each year. Then, beginning on February 1, and continuing through March 31, if 75 percent or more of the Florida east coast subzone quota has been taken by January 31, the trip limit remains 50 fish. However, if less than 75 percent of the quota has been taken by January 31, the trip limit increases to 75 fish. This alternative was not selected because it could result in a season that closes while the increased demand for king mackerel that occurs during the Lenten season is still high.

The second alternative would set the king mackerel commercial trip limit in the Florida east coast subzone at 50 fish for the entire fishing season. This alternative was not adopted because it would not provide the flexibility to allow

small businesses to increase landings of king mackerel when demand increases during the Lenten season.

The third alternative would set the king mackerel trip limit in the Florida east coast subzone at 75 fish for the entire fishing season. This alternative was not adopted because it would likely increase the king mackerel harvest prior to the Lenten season, reduce landings of king mackerel and associated revenues when demand is high during the Lenten season, and result in earlier closure, potentially even before the period of heightened demand.

Finally, this rule also removes language in the codified text regarding prevention of gear conflicts between hook-and-line and gillnet vessels in the South Atlantic EEZ. This change corrects an inadvertent error in the text, as discussed in the preamble. The regulation contained in § 622.387 was necessary before separate quotas, triplimits, and gillnet permits were implemented for the harvest of king mackerel off Florida. Since implementation of those management measures, the impact and relevance of § 622.387 have been zero. Consequently, its removal would have no impact on small businesses.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA,

the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all CMP vessel permit holders in the Atlantic region.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gillnet, Mackerel, Reporting and recordkeeping requirements, South Atlantic, Trip limits.

Dated: November 12, 2014

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.377, paragraph (b)(2)(iii) is revised and paragraph (b)(2)(vi) is added to read as follows:

§ 622.377 Gillnet restrictions.

* * * * *

(b) * * *

(2) * * *

(iii) No more than two gillnets, including any net in use, may be possessed at any one time, except for a vessel with a valid commercial vessel permit for Spanish mackerel engaged in a transfer as specified in paragraph (b)(2)(vi) of this section. If two gillnets, including any net in use, are possessed at any one time, they must have stretched mesh sizes (as allowed under the regulations) that differ by at least .25 inch (.64 cm), except for a vessel with a valid commercial vessel permit for Spanish mackerel engaged in a transfer as specified in paragraph (b)(2)(vi) of this section, in which case the vessel may possess

two gillnets of the same mesh size provided that one of the nets is transferred to that vessel.

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(vi) A portion of a gillnet may be transferred at sea only in the EEZ and only from a vessel with a valid commercial vessel permit for Spanish mackerel that has exceeded a trip limit specified in § 622.385 (b) to another vessel with a valid commercial vessel permit for Spanish mackerel that has not yet reached the trip limit (the receiving vessel). Only one such transfer is allowed per vessel per day. In addition, to complete a legal transfer at sea, all of the following must apply:

(A) All fish exceeding the applicable commercial trip limit may not be removed from the gillnet until the transfer is complete (i.e., the gillnet is onboard the receiving vessel). The fish transferred to the receiving vessel may not exceed the applicable commercial trip limit.

(B) The receiving vessel may possess no more than three gillnets on board after the transfer is complete.

(C) Prior to cutting the gillnet and prior to any transfer of Spanish mackerel from one vessel to another, the owner or operator of both vessels must contact NMFS Office for Law Enforcement, Port Orange, Florida, phone: 1-386-492-6686.

3. In § 622.385, the third sentence in the introductory text and paragraph (a)(2)(i) are revised to read as follows:

§ 622.385 Commercial trip limits.

* * * Except for Atlantic migratory group Spanish mackerel harvested by gillnet, as specified in § 622.377(b)(2)(vi), a species subject to a trip limit specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ. * * *

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(a) * * *

(2) * * *

(i) Eastern zone-Florida east coast subzone. In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board at any time or landed in a day from a vessel with a commercial permit for king mackerel as required under § 622.370(a)(1) as follows:

(A) From November 1 through the end of February--not to exceed 50 fish.

(B) Beginning on March 1 and continuing through March 31--

(1) If 70 percent or more of the Florida east coast subzone quota as specified in § 622.384(b)(1)(i)(A) has been taken--not to exceed 50 fish.

(2) If less than 70 percent of the Florida east coast subzone quota as specified in § 622.384(b)(1)(i)(A) has been taken--not to exceed 75 fish.

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§ 622.387 [Removed and Reserved]

4. Remove and reserve § 622.387.

[FR Doc. 2014-27280 Filed 11/18/2014 at 8:45 am; Publication Date: 11/19/2014]